

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED WOOD PRODUCTS COMPANY,

Plaintiff,

v.

TRI-STATE CONSTRUCTION, INC., a
Washington Corporation, and the CITY OF
EVERETT, WASHINGTON, a municipal
corporation

Defendants.

No. C04-2052Z

ORDER

This matter now comes before the Court on the City of Everett's Motion for Dismissal Pursuant to Fed. R. Civ. P. 12(b)(6) and 56, docket no. 19.

The Court having fully considered all of the papers submitted in connection with these motions, hereby ORDERS as follows:

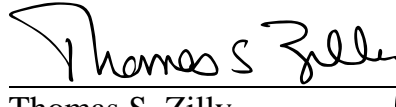
(1) Defendant City of Everett's Motion for Dismissal Pursuant to Fed. R. Civ. P. 12(b)(6) and 56, docket no. 19, is GRANTED. Plaintiff, United Wood Products Company, alleges that the City was negligent in its design, implementation, and construction of an effluent pipeline project in and around Plaintiff's land. See First Amended Complaint, docket no. 18, at ¶¶ 17, 18. Plaintiff seeks to recover economic damages suffered as a result of the alleged negligence. Id. Because deposition testimony and other exhibits have been submitted with the parties' briefs, the City's motion to dismiss will be treated as a motion for

1 summary judgment. See Fed. R. Civ. P. 12(b). Summary judgment is appropriate when
2 there is no genuine issue as to any material fact and the moving party is entitled to judgment
3 as a matter of law. Fed. R. Civ. P. 56(c). Here, the City is entitled to judgment as a matter
4 of law because Washington law does not recognize Plaintiff's "negligent construction"
5 claim. See Atherton Condominium Apartment-Owners Ass'n Bd. Of Directors v. Blume
6 Dev. Co., 115 Wash.2d 506, 526 (1990); see also Stuart v. Coldwell Banker Commercial
7 Group, Inc., 109 Wash.2d 406, 417-22 (1987). For these reasons, the Court GRANTS the
8 City of Everett's motion to dismiss and dismisses Defendant City of Everett from this action.

9 (2) The Clerk is directed to send a copy of this Order to all counsel of record.

10 IT IS SO ORDERED.

11 DATED this 9th day of May, 2005.

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13 Thomas S. Zilly
14 United States District Judge
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